Section VIII. Appendixes

Extracts from Laws Related to CSLB Laws & Regulations

THE CONSTITUTION OF THE STATE OF CALIFORNIA ARTICLE XIV. LABOR RELATIONS

Mechanics' Liens

3. Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

(Adopted June 8, 1976.)

NOTE: Persons entitled to claim liens are listed in the California Civil Code, section 3110.

BUSINESS AND PROFESSIONS CODE

Licensed Contractors Exemption from Architects Act

- 5537. (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:
- (1) Single-family dwellings of woodframe construction not more than two stories and basement in height.
- (2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot
- (3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.
- (4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.
- (b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for woodframe construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the

preparation of plans, drawings, specifications, or calculations for that portion by, or under the responsible control of, a licensed architect or registered engineer. The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation. Substantial compliance for purposes of this section is not intended to restrict the ability of the building officials to approve plans pursuant to existing law and is only intended to clarify the intent of Chapter 405 of the Statutes of 1985.

(Amended by Stats. 1990, Chapter 94 (AB 1005); Amended by Stats. 1996, Chapter 184 (SB 1607).)

Design Exemptions; Contractors

5537.2. This chapter shall not be construed as authorizing a licensed contractor to perform design services beyond those described in Section 5537 or in Chapter 9 (commencing with Section 7000), unless those services are performed by or under the direct supervision of a person licensed to practice architecture under this chapter, or a professional or civil engineer licensed pursuant to Chapter 7 (commencing with Section 6700) of Division 3, insofar as the professional or civil engineer practices the profession for which he or she is registered under that chapter.

However, this section does not prohibit a licensed contractor from performing any of the services permitted by Chapter 9 (commencing with Section 7000) of Division 3 within the classification for which the license is issued. Those services may include the preparation of shop and field drawings for work which he or she has contracted or offered to perform, and designing systems and facilities which are necessary to the completion of contracting services which he or she has contracted or offered to perform.

However, a licensed contractor may not use the title "architect," unless he or she holds a license as required in this chapter.

Licensed Contractor's Exemption from the Engineers Act

6737.3. A contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3, is exempt from the provisions of this chapter relating to the practice of electrical or mechanical engineering so long as the services he or she holds himself or herself out as able to perform or does perform, which services are subject to the provisions of this chapter, are performed by, or under the responsible supervision of a registered electrical or mechanical engineer insofar as the electrical or mechanical engineer practices the branch of engineering for which he or she is registered.

This section shall not prohibit a licensed contractor, while engaged in the business of contracting for the installation of electrical or mechanical systems or facilities, from designing those systems or facilities in accordance with applicable construction codes and standards for work to be performed and supervised by that contractor within the classification for which his or her license is issued, or from preparing electrical or mechanical shop or field drawings for work which he or she has contracted to perform. Nothing in this section is intended to imply that a licensed contractor may design work which is to be installed by another person.

(Amended by Stats. 1994, Chapter 26 (AB 1807), urgency, eff. March 30, 1994.)

Definitions

- 7590.1. The following terms as used in this chapter have the meaning expressed in this article:
- (a) "Person" means any individual, firm, company, association, organization, partnership, limited liability company, or corporation.
- (b) "Department" means the Department of Consumer Affairs.
- (c) "Director" means the Director of Consumer Affairs.
- (d) "Bureau" means the Bureau of Security and Investigative Services.
- (e) "Chief" means the Chief of the Bureau of Security and Investigative Services.
- (f) "Employer" means a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, and withholds all legally required deductions and contributions.
- (g) "Employee" means an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's direction and control.
- (h) "Employer-employee relationship" means an individual who works for another and where the individual's name appears on the payroll records of the employer.
- (i) "Licensee" means a business entity, whether an individual, partnership, or corporation licensed under this chapter.
- (j) "Qualified manager" means an individual who is in active control, management, and direction of the licensee's business, and who is in possession of a current and valid qualified manager's certificate pursuant to this chapter.
- (k) "Registrant" means any person registered or who has applied for registration under this chapter.
- (l) "Branch office" means any location, other than the principal place of business of the licensee, which is licensed as set forth in Article 11 (commencing with Section 7599.20).
- (m) "Branch office manager" means an individual designated by the qualified manager to manage the licensee's branch office and who has met the requirements as set forth in Article 11 (commencing with Section 7599.20).

- (n) "Alarm system" means an assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention and to which police are expected to respond.
- (o) "Alarm agent" means a person employed by an alarm company operator whose duties include selling on premises, altering, installing, maintaining, moving, repairing, replacing, servicing, responding, or monitoring an alarm system, or a person who manages or supervises
- a person employed by an alarm company to perform any of the duties described in this subdivision or any person in training for any of the duties described in this subdivision.
- (p) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slingshot, billy, sandclub, sandbag, metal knuckles; any dirk, dagger, pistol, revolver, or any other firearm; any knife having a blade longer than five inches; any razor with an unguarded blade; or any metal pipe or bar used or intended to be used as a club.
- (q) "Firearms permit" means a permit issued by the bureau, pursuant to Article 6 (commencing with Section 7596), to a licensee, a qualified manager, or an alarm agent, to carry an exposed firearm while on duty.
- (r) (1) "Advertisement" means:
- (A) Any written or printed communication for the purpose of soliciting, describing, or promoting the licensed business of the licensee, including a brochure, letter, pamphlet, newspaper, periodical, publication, or other writing.
- (B) A directory listing caused or permitted by the licensee which indicates his or her licensed activity.
- (C) A radio, television, or similar airwave transmission which solicits or promotes the licensed business of the licensee.
- (2) "Advertisement" does not include any of the following:
- (A) Any printing or writing used on buildings, vehicles, uniforms, badges, or other property where the purpose of the printing or writing is identification.
- (B) Any printing or writing on communications, memoranda, or any other writings used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of business.
- (C) Any printing or writing on novelty objects used in the promotion of the licensee's business where the printing of the information required by this chapter would be impractical due to the available area or surface.
- (s) "Residential sales agreement" means and includes an agreement between an alarm company operator and an owner or tenant for the purchase of an alarm system to be utilized in the personal residence of the owner or tenant.
- (t) "Firearm permit" means and includes "firearms permit," "firearms qualification card," "firearms qualification," and "firearms qualification permit."

(Amended by Stats. 1993, Chapter 1263 (AB 936); amended by Stats. 1994, Chapter 1010 (SB 2053);

Removal and Replacement of Pest Damaged Areas; Application of Wood Preservative; Contracting for Performance of Soil Treatment Pest Control Work

8556. Permissible operations by contractors; disclosure to customer

(a) Licensed contractors acting in their capacity as such, may remove and replace any structure or portions of a structure damaged by wood destroying pests or organisms if that work is incidental to other work being performed on the structure involved or if that work has been identified by a structural pest control inspection report. Licensed contractors acting in their capacity as such may apply wood preservatives directly to end cuts and drill holes of pressure treated wood, and to foundation wood as required by building codes, as well as to fencing and decking, by brush, dip, or spray method and need not obtain a license under this chapter for performance of that work, provided a disclosure in the following form is submitted to the customer in writing: "The application of a wood preservative is intended to prevent the establishment and flourishing of organisms which can deteriorate wood. If you suspect pest infestation or infection, contact a registered structural pest control company prior to the application of a wood preservative."

These exemptions do not authorize the performance of any other acts defined in Section 8505.

(b) A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests or organisms in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work must be done by a registered structural pest control company.

(Amended by Stats, 1989, Chapter 1401; amended by Stats. 1998, Chapter 970 (AB 2802); Stats.1999, Chapter 983 (SB 1307).)

CIVIL CODE

Construction Defects; New Homes

(Also known as the "Fix it" bill—SB 800)

43.99. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person or other legal entity that is under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or any rules or regulations adopted pursuant to that law, or under contract with that applicant to provide independent quality review of the work of improvement to determine compliance with these plans and specifications, if the person or other legal entity meets the requirements of this section and one of the following applies:

(1) The person, or a person employed by any other legal

- entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and has obtained certification as a building inspector, combination inspector, or combination dwelling inspector from the International Conference of Building Officials (ICBO) and has successfully passed the technical written examination promulgated by ICBO for those certification categories.
- (2) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and is a registered professional engineer, licensed general contractor, or a licensed architect rendering independent quality review of the work of improvement or plan examination services within the scope of his or her registration or licensure.
- (3) The immunity provided under this section does not apply to any action initiated by the applicant who retained the qualified person.
- (4) A "qualified person" for purposes of this section means a person holding a valid certification as one of those inspectors.
- (b) Except for qualified persons, this section shall not relieve from, excuse, or lessen in any manner, the responsibility or liability of any person, company, contractor, builder, developer, architect, engineer, designer, or other individual or entity who develops, improves, owns, operates, or manages any residential building for any damages to persons or property caused by construction or design defects. The fact that an inspection by a qualified person has taken place may not be introduced as evidence in a construction defect action, including any reports or other items generated by the qualified person. This subdivision shall not apply in any action initiated by the applicant who retained the qualified person.
- (c) Nothing in this section, as it relates to construction inspectors or plans examiners, shall be construed to alter the requirements for licensure, or the jurisdiction, authority, or scope of practice, of architects pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, professional engineers pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or general contractors pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.
- (d) Nothing in this section shall be construed to alter the immunity of employees of the Department of Housing and Community Development under the Tort Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) when acting pursuant to Section 17965 of the Health and Safety Code.
- (e) The qualifying person shall engage in no other construction, design, planning, supervision, or activities of any kind on the work of improvement, nor provide quality review services for any other party on the work of improvement.
- (f) The qualifying person, or other legal entity, shall maintain professional errors and omissions insurance

coverage in an amount not less than two million dollars (\$2,000,000).

(g) The immunity provided by subdivision (a) does not inure to the benefit of the qualified person for damages caused to the applicant solely by the negligence or willful misconduct of the qualified person resulting from the provision of services under the contract with the applicant.

Requirements for Actions for Construction Defects Chapter 1. Definitions

- 895. (a) "Structure" means any residential dwelling, other building, or improvement located upon a lot or within a common area.
- (b) "Designed moisture barrier" means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer's recommendations.
- (c) "Actual moisture barrier" means any component or material, actually installed, that serves to any degree as a barrier against moisture, whether or not intended as such.
- (d) "Unintended water" means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.
- (e) "Close of escrow" means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in subdivision (a) of Section 1351, "close of escrow" means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association's ability to decide whether to initiate a claim under this title, whichever is later.
- (f) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in subdivision (a) of Section 1351.

Chapter 2. Actionable Defects

896. In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

- (a) With respect to water issues:
- (1) A door shall not allow unintended water to pass beyond, around, or through the door or its designed or actual moisture barriers, if any.
- (2) Windows, patio doors, deck doors, and their systems shall not allow water to pass beyond, around, or through the window, patio door, or deck door or its designed or actual moisture barriers, including, without limitation, internal barriers within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (3) Windows, patio doors, deck doors, and their systems shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, windows, window assemblies, framing, substrate, flashings, and trim, if any.
- (4) Roofs, roofing systems, chimney caps, and ventilation components shall not allow water to enter the structure or to pass beyond, around, or through the designed or actual moisture barriers, including, without limitation, internal barriers located within the systems themselves. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, and sheathing, if any.
- (5) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow water to pass into the adjacent structure. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
- (6) Decks, deck systems, balconies, balcony systems, exterior stairs, and stair systems shall not allow unintended water to pass within the systems themselves and cause damage to the systems. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashing, and sheathing, if any.
- (7) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to cause damage to another building component.
- (8) Foundation systems and slabs shall not allow water or vapor to enter into the structure so as to limit the installation of the type of flooring materials typically used for the particular application.
- (9) Hardscape, including paths and patios, irrigation systems, landscaping systems, and drainage systems, that are installed as part of the original construction, shall not be installed in such a way as to cause water or soil erosion to enter into or come in contact with the structure so as to cause damage to another building component.
- (10) Stucco, exterior siding, exterior walls, including, without limitation, exterior framing, and other exterior wall finishes and fixtures and the systems of those components and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall be installed in such a way so as not to allow unintended water to pass into the structure or to pass beyond, around, or through the designed or actual moisture barriers of the

- system, including any internal barriers located within the system itself. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
- (11) Stucco, exterior siding, and exterior walls shall not allow excessive condensation to enter the structure and cause damage to another component. For purposes of this paragraph, "systems" include, without limitation, framing, substrate, flashings, trim, wall assemblies, and internal wall cavities, if any.
- (12) Retaining and site walls and their associated drainage systems shall not allow unintended water to pass beyond, around, or through its designed or actual moisture barriers including, without limitation, any internal barriers, so as to cause damage. This standard does not apply to those portions of any wall or drainage system that are designed to have water flow beyond, around, or through them.
- (13) Retaining walls and site walls, and their associated drainage systems, shall only allow water to flow beyond, around, or through the areas designated by design.
- (14) The lines and components of the plumbing system, sewer system, and utility systems shall not leak.
- (15) Plumbing lines, sewer lines, and utility lines shall not corrode so as to impede the useful life of the systems.
- (16) Sewer systems shall be installed in such a way as to allow the designated amount of sewage to flow through the system.
- (17) Shower and bath enclosures shall not leak water into the interior of walls, flooring systems, or the interior of other components.
- (18) Ceramic tile and tile countertops shall not allow water into the interior of walls, flooring systems, or other components so as to cause damage.
- (b) With respect to structural issues:
- (1) Foundations, load bearing components, and slabs, shall not contain significant cracks or significant vertical displacement.
- (2) Foundations, load bearing components, and slabs shall not cause the structure, in whole or in part, to be structurally unsafe. (3) Foundations, load bearing components, and slabs, and underlying soils shall be constructed so as to materially comply with the design criteria set by applicable government building codes, regulations, and ordinances for chemical deterioration or corrosion resistance in effect at the time of original construction.
- (4) A structure shall be constructed so as to materially comply with the design criteria for earthquake and wind load resistance, as set forth in the applicable government building codes, regulations, and ordinances in effect at the time of original construction.
- (c) With respect to soil issues:
- (1) Soils and engineered retaining walls shall not cause, in whole or in part, damage to the structure built upon the soil or engineered retaining wall.
- (2) Soils and engineered retaining walls shall not cause, in whole or in part, the structure to be structurally unsafe.

- (3) Soils shall not cause, in whole or in part, the land upon which no structure is built to become unusable for the purpose represented at the time of original sale by the builder or for the purpose for which that land is commonly used.
- (d) With respect to fire protection issues:
- (1) A structure shall be constructed so as to materially comply with the design criteria of the applicable government building codes, regulations, and ordinances for fire protection of the occupants in effect at the time of the original construction.
- (2) Fireplaces, chimneys, chimney structures, and chimney termination caps shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire outside the fireplace enclosure or chimney.
- (3) Electrical and mechanical systems shall be constructed and installed in such a way so as not to cause an unreasonable risk of fire.
- (e) With respect to plumbing and sewer issues: Plumbing and sewer systems shall be installed to operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action may be brought for a violation of this subdivision more than four years after close of escrow.
- (f) With respect to electrical system issues: Electrical systems shall operate properly and shall not materially impair the use of the structure by its inhabitants. However, no action shall be brought pursuant to this subdivision more than four years from close of escrow.
- (g) With respect to issues regarding other areas of construc-
- (1) Exterior pathways, driveways, hardscape, sidewalls, sidewalks, and patios installed by the original builder shall not contain cracks that display significant vertical displacement or that are excessive. However, no action shall be brought upon a violation of this paragraph more than four years from close of escrow. (2) Stucco, exterior siding, and other exterior wall finishes and fixtures, including, but not limited to, pot shelves, horizontal surfaces, columns, and plant-ons, shall not contain significant cracks or separations.
- (3) (A) To the extent not otherwise covered by these standards, manufactured products, including, but not limited to, windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, HVAC units, countertops, cabinets, paint, and appliances shall be installed so as not to interfere with the products' useful life, if any.
- (B) For purposes of this paragraph, "useful life" means a representation of how long a product is warranted or represented, through its limited warranty or any written representations, to last by its manufacturer, including recommended or required maintenance. If there is no representation by a manufacturer, a builder shall install manufactured products so as not to interfere with the product's utility.
- (C) For purposes of this paragraph, "manufactured product" means a product that is completely manufactured offsite.

- (D) If no useful life representation is made, or if the representation is less than one year, the period shall be no less than one year. If a manufactured product is damaged as a result of a violation of these standards, damage to the product is a recoverable element of damages. This subparagraph does not limit recovery if there has been damage to another building component caused by a manufactured product during the manufactured product's useful life.
- (E) This title does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.
- (4) Heating, if any, shall be installed so as to be capable of maintaining a room temperature of 70 degrees Fahrenheit at a point three feet above the floor in any living space.
- (5) Living space air-conditioning, if any, shall be provided in a manner consistent with the size and efficiency design criteria specified in Title 24 of the California Code of Regulations or its successor.
- (6) Attached structures shall be constructed to comply with interunit noise transmission standards set by the applicable government building codes, ordinances, or regulations in effect at the time of the original construction. If there is no applicable code, ordinance, or regulation, this paragraph does not apply. However, no action shall be brought pursuant to this paragraph more than one year from the original occupancy of the adjacent unit.
- (7) Irrigation systems and drainage shall operate properly so as not to damage landscaping or other external improvements. However, no action shall be brought pursuant to this paragraph more than one year from close of escrow.
- (8) Untreated wood posts shall not be installed in contact with soil so as to cause unreasonable decay to the wood based upon the finish grade at the time of original construction. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (9) Untreated steel fences and adjacent components shall be installed so as to prevent unreasonable corrosion. However, no action shall be brought pursuant to this paragraph more than four years from close of escrow.
- (10) Paint and stains shall be applied in such a manner so as not to cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturers' representations, if any. However, no action shall be brought pursuant to this paragraph more than five years from close of escrow.
- (11) Roofing materials shall be installed so as to avoid materials falling from the roof.
- (12) The landscaping systems shall be installed in such a manner so as to survive for not less than one year. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.
- (13) Ceramic tile and tile backing shall be installed in such a manner that the tile does not detach.
- (14) Dryer ducts shall be installed and terminated pursuant to manufacturer installation requirements. However, no action shall be brought pursuant to this paragraph more than two years from close of escrow.

- (15) Structures shall be constructed in such a manner so as not to impair the occupants' safety because they contain public health hazards as determined by a duly authorized public health official, health agency, or governmental entity having jurisdiction. This paragraph does not limit recovery for any damages caused by a violation of any other paragraph of this section on the grounds that the damages do not constitute a health hazard.
- 897. The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

Chapter 3. Obligations

- 900. As to fit and finish items, a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of the following building components. Except as otherwise provided by the standards specified in Chapter 2 (commencing with Section 896), this warranty shall cover the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, but shall not apply to damage to those components caused by defects in other components governed by the other provisions of this title. Any fit and finish matters covered by this warranty are not subject to the provisions of this title. If a builder fails to provide the express warranty required by this section, the warranty for these items shall be for a period of one year.
- 901. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner than that set forth in Chapter 2 (commencing with Section 896). A builder may not limit the application of Chapter 2 (commencing with Section 896) or lower its protection through the express contract with the homeowner. This type of express contract constitutes an "enhanced protection agreement."
- 902. If a builder offers an enhanced protection agreement, the builder may choose to be subject to its own express contractual provisions in place of the provisions set forth in Chapter 2 (commencing with Section 896). If an enhanced protection agreement is in place, Chapter 2 (commencing with Section 896) no longer applies other than to set forth minimum provisions by which to judge the enforceability of the particular provisions of the enhanced protection agreement.
- 903. If a builder offers an enhanced protection agreement in place of the provisions set forth in Chapter 2 (commencing with Section 896), the election to do so shall be made in writing with the homeowner no later than the close of escrow. The builder shall provide the homeowner with a complete copy of Chapter 2 (commencing with Section 896) and advise the homeowner that the builder has elected not to be subject to its provisions. If any provision of an enhanced protection agreement is later found to be

unenforceable as not meeting the minimum standards of Chapter 2 (commencing with Section 896), a builder may use this chapter in lieu of those provisions found to be unenforceable.

904. If a builder has elected to use an enhanced protection agreement, and a homeowner disputes that the particular provision or time periods of the enhanced protection agreement are not greater than, or equal to, the provisions of Chapter 2 (commencing with Section 896) as they apply to the particular deficiency alleged by the homeowner, the homeowner may seek to enforce the application of the standards set forth in this chapter as to those claimed deficiencies. If a homeowner seeks to enforce a particular standard in lieu of a provision of the enhanced protection agreement, the homeowner shall give the builder written notice of that intent at the time the homeowner files a notice of claim pursuant to Chapter 4 (commencing with Section 910).

905. If a homeowner seeks to enforce Chapter 2 (commencing with Section 896), in lieu of the enhanced protection agreement in a subsequent litigation or other legal action, the builder shall have the right to have the matter bifurcated, and to have an immediately binding determination of his or her responsive pleading within 60 days after the filing of that pleading, but in no event after the commencement of discovery, as to the application of either Chapter 2 (commencing with Section 896) or the enhanced protection agreement as to the deficiencies claimed by the homeowner. If the builder fails to seek that determination in the timeframe specified, the builder waives the right to do so and the standards set forth in this title shall apply. As to any nonoriginal homeowner, that homeowner shall be deemed in privity for purposes of an enhanced protection agreement only to the extent that the builder has recorded the enhanced protection agreement on title or provided actual notice to the nonoriginal homeowner of the enhanced protection agreement. If the enhanced protection agreement is not recorded on title or no actual notice has been provided, the standards set forth in this title apply to any nonoriginal homeowners' claims.

906. A builder's election to use an enhanced protection agreement addresses only the issues set forth in Chapter 2 (commencing with Section 896) and does not constitute an election to use or not use the provisions of Chapter 4 (commencing with Section 910). The decision to use or not use Chapter 4 (commencing with Section 910) is governed by the provisions of that chapter.

907. A homeowner is obligated to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practices. A failure by a homeowner to follow these obligations, schedules, and practices may subject the homeowner to the affirmative defenses contained in Section 944.

Chapter 4. Prelitigation Procedure

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant

shall initiate the following prelitigation procedures:

- (a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.
- (b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.
- 911. For purposes of this title, "builder" means a builder, developer, or original seller and applies to the sale of new residential units on and after January 1, 2003.
- 912. A builder shall do all of the following:
- (a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.
- (b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her

residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

- (c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.
- (e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.
- (f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.
- (g) A builder shall provide with the original sales documentation, a written copy of this part which shall be initialed and acknowledged by the purchaser and the builder's sales representative.
- (h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.
- (i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.
- 913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within

- 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.
- 914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable. At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.
- (b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.
- 915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
- 916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection

and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

- (b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoilation defense by any potential party in any subsequent litigation.
- (c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.
- (d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.
- (e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.
- 917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying

the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection. to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the

claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

- 921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.
- (b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.
- 922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.
- 923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.
- 924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.
- 925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.
- 926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944
- 927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the

claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

- 928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.
- 929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.
- (b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.
- 930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

- (b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.
- 931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.
- 932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard.
- 933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.
- 934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.
- 935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.
- 936. Each and every provision of the other chapters of this title apply to subcontractors, material suppliers, individual

- product manufacturers, and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a subcontractor, material supplier, design professional, individual product manufacturer, or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, this section does not apply to any subcontractor, material supplier, individual product manufacturer, or design professional to which strict liability would apply.
- 937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.
- 938. This title applies only to residences originally sold on or after January 1, 2003.

Chapter 5. Procedure

- 941. (a) Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion.
- (b) As used in this section, "action" includes an action for indemnity brought against a person arising out of that person's performance or furnishing of services or materials referred to in this title, except that a cross-complaint for indemnity may be filed pursuant to subdivision (b) of Section 428.10 of the Code of Civil Procedure in an action which has been brought within the time period set forth in subdivision (a).
- (c) The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to make a claim or bring an action.
- (d) Sections 337.15 and 337.1 of the Code of Civil Procedure shall not apply to actions under this title.
- (e) Existing statutory and decisional law regarding tolling of the statute of limitations shall apply to the time periods for filing an action or making a claim under this title, except that repairs made pursuant to Chapter 4 (commencing with Section 910), with the exception of the tolling provision contained in Section 927, do not extend the period for filing an action, or restart the time limitations contained in subdivisions (a) or (b) if 7091 of the Business

and Professions Code. If a builder arranges for a contractor to perform a repair pursuant to Chapter 4 (commencing with Section 910), as to the builder the time period for calculating the statute of limitation in subdivisions (a) or (b) if Section 7091 of the Business and Professions Code shall pertain to the substantial completion of the original construction and not to the date of repairs under this title. The time limitations established by this title do not apply to any action by a claimant for a contract or express contractual provision. Causes of action and damages to which this chapter does not apply are not limited by this section. In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in Section 945.5. No further showing of causation or damages is required to meet the burden of proof regarding a violation of a standard set forth in Chapter 2 (commencing with Section 896), provided that the violation arises out of, pertains to, or is related to, the original construction.

- 942. (a) Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.
- (b) As to any claims involving a detached single-family home, the homeowner's right to the reasonable value of repairing any nonconformity is limited to the repair costs, or the diminution in current value of the home caused by the nonconformity, whichever is less, subject to the personal use exception as developed under common law.
- 944. If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.
- 945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in Section 383 of the Code of Civil Procedure shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.
- 945.5. A builder, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in

whole or in part, from any obligation, damage, loss, or liability if the builder can demonstrate any of the following affirmative defenses in response to a claimed violation:

- (a) To the extent it is caused by an unforeseen act of nature which caused the structure not to meet the standard. For purposes of this section an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.
- (b) To the extent it is caused by a homeowner's unreasonable failure to minimize or prevent those damages in a timely manner, including the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this title. This includes the failure to give timely notice to the builder after discovery of a violation, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim.
- (c) To the extent it is caused by the homeowner or his or her agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow the builder's or manufacturer's recommendations, or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder shall show that the homeowner had written notice of these schedules and recommendations and that the recommendations and schedules were reasonable at the time they were issued.
- (d) To the extent it is caused by the homeowner or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the structure's use for something other than its intended purpose.
- (e) To the extent that the time period for filing actions bars the claimed violation.
- (f) As to a particular violation for which the builder has obtained a valid release.
- (g) To the extent that the builder's repair was successful in correcting the particular violation of the applicable standard.
- (h) As to any causes of action to which this statute does not apply, all applicable affirmative defenses are preserved.

Home Solicitation Contracts

Definitions

1689.5 As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:

(a) "Home solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including any interest or service charges. "Home solicitation contract" does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit

Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto, or any contract for repair services with a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if (1) the contract price is less than one hundred dollars (\$100), (2) the negotiation between the parties was initiated by the prospective buyer, and (3) the contract contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer.

- (b) "Appropriate trade premises," means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.
- (c) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with this vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in Section 18008 of the Health and Safety Code, nor any goods sold with this mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.
- (d) "Services" means work, labor and services, including, but not limited to, services furnished in connection with the repair, restoration, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, that are not connected with the sale of goods or services, as defined herein, nor the sale of insurance that is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the state.
- (e) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(Amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57).)

Cancellation of Home Solicitation Contract

- 1689.6. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.
- (b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).
- (c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract.
- (d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.
- (e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.
- (f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.
- (g) "Personal emergency response unit," for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.

(Amended by Stats. 1992, Chapter 145 (AB 2378); amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57).)

Form of Notice of Cancellation

1689.7. (a) (1) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may

cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

- (2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
- (3) The statement required pursuant to this subdivision for

- the repair or restoration of residential premises damaged by a disaster pursuant to subdivision (c) of Section 1689.6 is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."
- (b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.
- (c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

/enter date of transaction/

(Date)

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

/name of seller/	
at	
/address of sellers place of business/	
not later than midnight of(Date)	
I hereby cancel this transaction(Date)	
(Buyer's signature)	

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be Accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) Any agreement or offer to purchase services for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be subject to the requirements of subdivision (c) of this section, and shall be accompanied by the "Notice of Cancellation" required by subdivision (c) of this section, except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

- (f) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.
- (g) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.
- (h) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

(Amended by Stats. 1993, Chapter 589 (AB 2211); amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57).)

Contract Which Provides for Lien

1689.8. (a) Every home solicitation contract or offer for home improvement goods or services which provides for a lien on real property is subject to the provisions of Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3.

(b) For purposes of this section, "home improvement goods or services" means goods and services, as defined in Section 1689.5, which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, burglar alarms, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

Exemption

1689.9. Where the goods sold under any home solicitation contract are so affixed to real property as to become a part thereof, whether or not severable therefrom, the buyer shall not have the right to cancel as provided in Section 1689.6 or Section 1689.7 if, subsequent to his signing such contract, he has sold or encumbered such real property to a bona fide purchaser or encumbrancer who was not a party to such sale of goods or to any loan agreement in connection therewith.

After Cancellation, Seller to Return Down Payment

1689.10. (a) Except as provided in Sections 1689.6 to 1689.11, inclusive, within 10 days after a home solicitation contract or offer has been canceled, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

- (b) If the downpayment includes goods traded in, the goods must be tendered in substantially as good condition as when received.
- (c) Until the seller has complied with the obligations imposed by Sections 1689.7 to 1689.11, inclusive, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods for any recovery to which he is entitled.

Buyer to Return Goods

- 1689.11. (a) Except as provided in subdivision (c) of Section 1689.10, within 20 days after a home solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he is not obligated to tender at any place other than his own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.
- (b) The buyer has a duty to take reasonable care of the goods in his possession both prior to cancellation and during the 20-day period following. During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.
- (c) If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

Invalidity of Waiver of Statute

1689.12. Any waiver or confession of judgment of the provisions of Sections 1689.5 to 1689.11, inclusive, shall be deemed contrary to public policy and shall be void and unenforceable.

Notice Not Required for Emergency Situations

1689.13. Sections 1689.5 to 1689.7, inclusive, Sections 1689.10 to 1689.12, inclusive, and Section 1689.14 shall not apply to a contract that is initiated by the buyer or his or her agent or insurance representative and that is executed in

connection with the making of emergency or immediate necessity repairs or services that are necessary for the immediate protection of persons or real or personal property, provided that the buyer furnishes the seller with a separate dated and signed personal statement describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three or seven business days, whichever applies.

(Amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX57).)

Void Contracts

1689.14. (a) Any home solicitation contract or offer for the repair or restoration of residential premises signed by the buyer on or after the date on which a disaster causes damage to the residential premises, but not later than midnight of the seventh business day after this date, shall be void, unless the buyer or his or her agent or insurance representative solicited the contract or offer at the appropriate trade premises of the seller. Any contract covered by this subdivision shall not be void if solicited by the buyer or his or her agent or insurance representative regardless of where appropriate trade premises of the seller whether or not the call is in response to a prior home solicitation.

(b) As used in this section and Section 1689.6, "disaster" means an earthquake, flood, fire, hurricane, riot, storm, tidal wave, or other similar sudden or catastrophic occurrence for which a state of emergency has been declared by the President of the United States or the Governor or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county.

(Added by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57); Amended by Stats. 1995, Chapter 123 (AB 1610) eff. July 18, 1995.)

Unlawful Practices

- 1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:
- (1) Passing off goods or services as those of another.
- (2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.
- (3) Misrepresenting the affiliation, connection, or association with, or certification by, another.
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services.
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.
- (6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact.

- (9) Advertising goods or services with intent not to sell them as advertised.
- (10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.
- (11) Advertising furniture without clearly indicating that it is unassembled if that is the case.
- (12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller.
- (13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.
- (14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.
- (15) Representing that a part, replacement, or repair service is needed when it is not.
- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.
- (17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
- (18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.
- (19) Inserting an unconscionable provision in the contract.
- (20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (1) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (2) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses which are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code where more than 50 percent of purchases are made at the specific price set forth in the advertisement.
- (21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.
- (22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.
- (B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person

having an established relationship with the person or organization making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(23) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (1) there was an agency relationship between the party who engaged in home solicitation and the third party or (2) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

- (b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, "mortgage broker or lender" includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).
- (2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. Nothing in this paragraph shall have any effect on the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

(Amended by Stats. 1995, Chapter 255 (SB 320); Amended by Stats. 1996, Chapter 684 (SB 2045).)

Home Roof Warranties

Application of Chapter

1797.90. This chapter shall apply to all contracts and warranties for roofing materials used on a residential structure, including, but not limited to, a manufactured

home or mobilehome, and to all contracts and warranties for the installation, repair, or replacement of all or any portion of the roof of a residential structure, including, but not limited to, a manufactured home or mobilehome.

(Added by Stats. 1993, Chapter 835 (SB 409).)

Necessity for Written Contract

1797.91 Any contract for roofing materials, or for the installation, repair, or replacement of all or any portion of the roof of a residential structure, including, but not limited to, a manufactured home or mobilehome, shall be in writing if the contract includes any warranty of the materials or workmanship that extends for any period of time beyond completion of the work.

(Added by Stats. 1993, Chapter 835 (SB 409).)

Beneficiaries of Warranty

1797.92 For any contract subject to this chapter that is entered into on or after January 1, 1994, the warranty obligations shall inure to the benefit of, and shall be directly enforceable by, all subsequent purchasers and transferees of the residential structure, without limitation, unless the contract contains a clear and conspicuous provision limiting transferability of the warranty.

(Added by Stats. 1993, Chapter 835 (SB 409).)

Retail Seller Contracts

Security Interest in Goods Paid For or Not Sold; Security Interest in Real Property for Sale of Unattached Goods

- 1804.3. (a) No contract other than one for services shall provide for a security interest in any goods theretofore fully paid for or which have not been sold by the seller.
- (b) Any contract for goods which provides for a security interest in real property where the primary goods sold are not to be attached to the real property shall be a violation of this chapter and subject to the penalties set forth in Article 12.2 (commencing with Section 1812.6).
- (c) This section shall become operative October 1, 1982.

Undelivered Goods

- 1805.6. (a) Notwithstanding the provisions of any contract to the contrary, except as provided in subdivision (b) or (c), no retail seller shall assess any finance charge for goods purchased under a retail installment contract until the goods are in the buyer's possession.
- (b) A finance charge may be assessed for such undelivered goods, as follows:
- (1) From the date when such goods are available for pickup by the buyer and the buyer is notified of their availability, or
- (2) From the date of purchase, when such goods are delivered or available for pickup by the buyer within 10 days of the date of purchase.
- (c) In the case of a home improvement contract as defined in Section 7151.2 of the Business and Professions Code, a finance charge may be assessed from the approximate date

of commencement of the work as set forth in the home improvement contract.

Finance Charge

1810.10. (a) Notwithstanding the provision of any contract to the contrary, except as provided in subdivision (b) or (c), no retail seller shall assess any finance charge against the outstanding balance for goods purchased under a retail installment account until the goods are in the buyer's possession.

- (b) A finance charge may be assessed against the outstanding balance for such undelivered goods, as follows:
- (1) From the date when such goods are available for pickup by the buyer and the buyer is notified of their availability, or
- (2) From the date of purchase, when such goods are delivered or available for pickup by the buyer within 10 days of the date of purchase.
- (c) In the case of a home improvement contract as defined in Section 7151.2 of the Business and Professions Code, a finance charge may be assessed against the amount financed from the approximate date of commencement of the work as set forth in the home improvement contract.

Construction Contracts; Invalidity of Provisions to Indemnify Promisee Against Liability; Exceptions; Contracts with Public Agencies; Invalidity of Provisions to Relieve Public Agency from Liability for Active Negligence

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and which purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to such promisee, or for defects in design furnished by such persons, are against public policy and are void and unenforceable; provided, however, that this provision shall not affect the validity of any insurance contract, workers' compensation or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency which purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency shall be void and unenforceable.

(Amended by Stats. 1990, Chapter 814 (SB 1922).)

Exception for Professional Engineer or Geologist; "Hazardous Materials" Defined

2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to indemnify a professional engineer or geologist or the agents, servants, independent contractors, subsidiaries, or employees of that engineer or

geologist from liability as described in Section 2782 in providing hazardous materials identification, evaluation, preliminary assessment, design, remediation services, or other services of the types described in Sections 25322 and 25323 of the Health and Safety Code or the federal National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are satisfied:

- (1) The services in whole or in part address subterranean contamination or other concealed conditions caused by the hazardous materials. (2) The promisor is responsible, or potentially responsible, for all or part of the contamination.
- (b) The indemnification described in this section is valid only for damages arising from, or related to, subterranean contamination or concealed conditions, and is not applicable to the first two hundred fifty thousand dollars (\$250,000) of liability or such greater amount as is agreed by the parties.
- (c) This section does not authorize contracts for indemnification, by promisors specified in paragraph (2) of subdivision (a), of any liability of a promisee arising from the gross negligence or willful misconduct of the promisee.
- (d) "Hazardous materials," as used in this section, means any hazardous or toxic substance, material, or waste which is or becomes subject to regulation as such by any agency of the state, any municipality or political subdivision of the state, or the United States.
- "Hazardous materials" includes, but is not limited to, any material or substance that is any of the following:
- (1) A hazardous substance, as defined in Section 25316 of the Health and Safety Code.
- (2) Hazardous material, as defined in subdivision (j) of Section 25501 of the Health and Safety Code.
- (3) Acutely hazardous material, as defined in subdivision (a) of Section 25532 of the Health and Safety Code.
- (4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.
- (5) Extremely hazardous waste, as defined in Section 25115 of the Health and Safety Code.
- (6) Petroleum.
- (7) Asbestos.
- (8) Designated as a hazardous substance for purposes of Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).
- (9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6903).
- (10) A hazardous substance, as defined by subsection (14) of Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601).
- (11) A regulated substance, as defined by subsection (2) of Section 9001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).
- (e) Nothing in this section shall be construed to alter, modify, or otherwise affect the liability of the promisor or

promisee, under an indemnity agreement meeting the criteria of this section, to third parties for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense.

(f) This section does not apply to public entities, as defined by Section 811.2 of the Government Code.

(Added by Stats. 1990, Chapter 814 (SB 1922).)

Works of Improvement

"Preliminary 20-Day Notice (Private Work)"; Procedure

3097. "Preliminary 20-day notice (private work)" means a written notice from a claimant that is given prior to the recording of a mechanic's lien, prior to the filing of a stop notice, and prior to asserting a claim against a payment bond, and is required to be given under the following circumstances:

- (a) Except one under direct contract with the owner or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's compensation is paid as described in subdivision (b) of Section 3089, every person who furnishes labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, payment bond, and of a notice to withhold, cause to be given to the owner or reputed owner, to the original contractor, or reputed contractor, and to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.
- (b) Except the contractor, or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's compensation is paid as described in subdivision (b) of Section 3089, all persons who have a direct contract with the owner and who furnish labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, claim on a payment bond, and of a notice to withhold, cause to be given to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.
- (c) The preliminary notice referred to in subdivisions (a) and (b) shall contain the following information:
- (1) A general description of the labor, service, equipment, or materials furnished, or to be furnished, and an estimate of the total price thereof.
- (2) The name and address of the person furnishing that labor, service, equipment, or materials.
- (3) The name of the person who contracted for purchase of that labor, service, equipment, or materials.

- (4) A description of the jobsite sufficient for identification.
- (5) The following statement in boldface type:

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor, or (2) any other method or device that is appropriate under the circumstances.

(6) If the notice is given by a subcontractor who has failed to pay all compensation due to his or her laborers on the job, the notice shall also contain the identity and address of any laborer and any express trust fund to whom employer payments are due.

If an invoice for materials or certified payroll contains the information required by this section, a copy of the invoice, transmitted in the manner prescribed by this section shall be sufficient notice.

A certificated architect, registered engineer, or licensed land surveyor who has furnished services for the design of the work of improvement and who gives a preliminary notice as provided in this section not later than 20 days after the work of improvement has commenced shall be deemed to have complied with subdivisions (a) and (b) with respect to architectural, engineering, or surveying services furnished, or to be furnished.

- (d) The preliminary notice referred to in subdivisions (a) and (b) shall be given not later than 20 days after the claimant has first furnished labor, service, equipment, or materials to the jobsite. If labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a preliminary notice, that claimant shall not be precluded from giving a preliminary notice at any time thereafter. The claimant shall, however, be entitled to record a lien, file a stop notice, and assert a claim against a payment bond only for labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter.
- (e) Any agreement made or entered into by an owner, whereby the owner agrees to waive the rights or privileges conferred upon the owner by this section shall be void and of no effect.
- (f) The notice required under this section may be served as follows:
- (1) If the person to be notified resides in this state, by delivering the notice personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified

mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j).

- (2) If the person to be notified does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender or to the original contractor.
- (3) When service is made by first-class certified or registered mail, service is complete at the time of the deposit of that registered or certified mail.
- (g) A person required by this section to give notice to the owner, to an original contractor, and to a person to whom a notice to withhold may be given, need give only one notice to the owner, to the original contractor, and to the person to whom a notice to withhold may be given with respect to all materials, services, labor, or equipment he or she furnishes for a work of improvement, that means the entire structure or scheme of improvements as a whole, unless the same is furnished under contracts with more than one subcontractor, in which event, the notice requirements shall be met with respect to materials, services, labor, or equipment furnished to each contractor.

If a notice contains a general description required by subdivision (a) or (b) of the materials, services, labor, or equipment furnished to the date of notice, it is not defective because, after that date, the person giving notice furnishes materials, services, labor, or equipment not within the scope of this general description.

(h) If the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars (\$400), the failure of that contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

If the notice is required to contain the information set forth in paragraph (6) of subdivision (c), a failure to give the notice, including that information, that results in the filing of a lien, claim on a payment bond, or the delivery of a stop notice by the express trust fund to which the obligation is owing constitutes grounds for disciplinary action by the Registrar of Contractors against the subcontractor if the amount due the trust fund is not paid.

(i) Every city, county, city and county, or other governmental authority issuing building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch, designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the authority.

If there is no known construction lender, that fact shall be noted in the designated space. Any failure to indicate the name and address of the construction lender on the application, however, shall not relieve any person from the obligation to give to the construction lender the notice required by this section.

(j) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for the purpose of constructing improvements on real property, shall bear the designation "Construction Trust Deed" prominently on its face and shall state all of the following: (1) the name and address of the lender, and the name and address of the owner of the real property described in the instrument, and (2) a legal description of the real property that secures the loan and, if known, the street address of the property. The failure to be so designated or to state any of the information required by this subdivision shall not affect the validity of the mortgage, deed of trust, or other instrument.

Failure to provide this information on this instrument when recorded shall not relieve persons required to give preliminary notice under this section from that duty.

The county recorder of the county in which the instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

- (k) Every contractor and subcontractor employing laborers as described in subdivision (a) of Section 3089 who has failed to pay those laborers their full compensation when it became due, including any employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder shall, without regard to whether the work was performed on a public or private work, cause to be given to those laborers, their bargaining representatives, if any, and to the construction lender, if any, or to the reputed construction lender, if any, not later than the date the compensation became delinquent, a written notice containing all of the following:
- (1) The name of the owner and the contractor.
- (2) A description of the jobsite sufficient for identification.
- (3) The identity and address of any express trust fund described in Section 3111 to which employer payments are due.
- (4) The total number of straight time and overtime hours on each job.
- (5) The amount then past due and owing.

Failure to give this notice shall constitute grounds for disciplinary action by the Registrar of Contractors. (l) Every written contract entered into between a property owner and an original contractor shall provide space for the owner to enter his or her name, residence address, and place of business if any. The original contractor shall make available the name and address of residence of the owner to any person seeking to serve the notice specified in subdivision (c).

(m) Every written contract entered into between a property owner and an original contractor, except home improvement contracts and swimming pool contracts subject to Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business and Professions Code, shall provide space for the owner to enter the name and address

of the construction lender or lenders. The original contractor shall make available the name and address of the construction lender or lenders to any person seeking to serve the notice specified in subdivision (c). Every contract entered into between an original contractor and subcontractor, and between subcontractors, shall provide a space for the name and address of the owner, original contractor, and any construction lender.

- (n) Where one or more construction loans are obtained after commencement of construction, the property owner shall provide the name and address of the construction lender or lenders to each person who has given the property owner the notice specified in subdivision (c).
- (o)(1) Each person who has served a preliminary 20-day notice pursuant to subdivision (f) may file the preliminary 20-day notice with the county recorder in the county in which any portion of the property is located. A preliminary 20-day notice filed pursuant to this section shall contain all of the following:
- (A) The name and address of the person furnishing the labor, service, equipment, or materials.
- (B) The name of the person who contracted for purchase of the labor, services, equipment, or materials.
- (C) The common street address of the jobsite.
- (2) Upon the acceptance for recording of a notice of completion or notice of cessation the county recorder shall mail to those persons who have filed a preliminary 20-day notice, notification that a notice of completion or notice of cessation has been recorded on the property, and shall affix the date that the notice of completion or notice of cessation was recorded with the county recorder.
- (3) The failure of the county recorder to mail the notification to the person who filed a preliminary 20-day notice, or the failure of those persons to receive the notification or to receive complete notification, shall not affect the period within which a claim of lien is required to be recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary 20-day notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation.
- (4) This new function of the county recorder shall not become operative until July 1, 1988. The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing.
- (5) The preliminary 20-day notice that a person may file pursuant to this subdivision is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The notice that is filed is not a recordable document and shall not be entered into those official records of the county which by law impart constructive notice. Notwithstanding any other provision of law, the index maintained by the recorder of filed preliminary 20-day notices shall be separate and distinct from those indexes maintained by the county recorder of those official records of the county which by law impart constructive notice. The filing of a preliminary 20-day notice with the county recorder does

not give rise to any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary 20-day notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.

- (p)(1) The change made to the statement described in subdivision (c) by Chapter 974 of the Statutes of 1994 shall have no effect upon the validity of any notice that otherwise meets the requirements of this section. The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted shall not affect the validity of any preliminary notice provided pursuant to this section.
- (2)(A) The inclusion of the language added to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, shall not affect the validity of any preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments to this section enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise meets the requirements of that subdivision.
- (B) A preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments to this section enacted at the 2000 portion of the 1999- 2000 Regular Session, shall not be invalid because of the failure to include the language added to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, if the notice otherwise complies with that subdivision.
- (C) The failure to provide an affidavit form or notice of rights, or both, pursuant to the requirements of Chapter 795 of the Statutes of 1999, shall not affect the validity of any preliminary notice pursuant to this section.

(Amended by Stats. 1994, Chapter 974 (AB 3357); Stats. 1995, Chapter 225 (AB 901), eff. July 31, 1995; Stats.1999, Chapter 795 (SB 914); Stats. 2000, Chapter 13 (AB 576), effective April 17, 2000; Stats. 2001, Chapter 159 (SB 662).)

Disbursement of Retention Proceeds

- 3260. (a) This section is applicable with respect to all contracts entered into on or after July 1, 1991, relating to the construction of any private work of improvement. However, the amendments made to this section during the 1992 portion of the 1991-92 Regular Session of the Legislature are applicable only with respect to contracts entered into on or after January 1, 1993, relating to the construction of any private work of improvement. Moreover, the amendments made to this section during the 1993 portion of the 1993-94 Regular Session of the Legislature are applicable only with respect to contracts entered into on or after January 1, 1994, relating to the construction of any private work of improvement.
- (b) The retention proceeds withheld from any payment by the owner from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.
- (c) Within 45 days after the date of completion, the retention withheld by the owner shall be released. "Date of completion," for purposes of this section, means any of the following:

- (1) The date of issuance of any certificate of occupancy covering the work by the public agency issuing the building permit.
- (2) The date of completion indicated on a valid notice of completion recorded pursuant to Section 3093.
- (3) The date of completion as defined in Section 3086.
- However, release of retentions withheld for any portion of the work of improvement which ultimately will become the property of a public agency, may be conditioned upon the acceptance of the work by the public agency. In the event of a dispute between the owner and the original contractor, the owner may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.
- (d) Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.
- (e) If a bona fide dispute exists between a subcontractor and the original contractor, the original contractor may withhold from that subcontractor with whom the dispute exists its portion of the retention proceeds. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.
- (f) Within 10 days of receipt of written notice by the owner from the original contractor or by the original contractor from the subcontractor, as the case may be, that any work in dispute has been completed in accordance with the terms of the contract, the owner or original contractor shall advise the notifying party of the acceptance or rejection of the disputed work. Within 10 days of acceptance of the disputed work, the owner or original contractor, as the case may be, shall release the retained portion of the retention proceeds.
- (g) In the event that retention payments are not made within the time periods required by this section, the owner or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.
- (h) It shall be against public policy for any party to require any other party to waive any provision of this section.
- (i) This section shall not be construed to apply to retentions withheld by a lender in accordance with the construction loan agreement.

(Amended by Stats. 1992, Chapter 387 (AB 1352), operative until January 1, 1996; amended by Stats 1993, Chapter 271 (AB 138); amended by Stats. 1994 Chapter 1046 (AB 2962).)

Construction Contracts for Private Works of Improvement; Progress Payments

- 3260.1. (a) This section is applicable with respect to all contracts entered into on or after January 1, 1992, relating to the construction of any private work of improvement.
- (b) Except as otherwise agreed in writing, the owner shall pay to the contractor, within 30 days following receipt of a demand for payment in accordance with the contract, any progress payment due thereunder as to which there is no good faith dispute between the parties. In the event of a dispute between the owner and the contractor, the owner may withhold from the progress payment an amount not to exceed 150 percent of the disputed amount. If any amount is wrongfully withheld in violation of this subdivision, the contractor shall be entitled to the penalty specified in subdivision (g) of Section 3260.
- (c) Nothing in this section shall be deemed to supersede any requirement of Section 3260 respecting the withholding of retention proceeds.

(Added by Stats. 1991, Chapter 368 (AB 1608); Amended by Stats. 1999, Chapter 982 (AB 1678).)

Contractor's Right to Serve 10-Day Stop Work Order

3260.2 (a) If an original contractor is not paid all moneys which are owed pursuant to a written contract for a private work of improvement within 35 days from the date payment is due pursuant to the written contract, and there is no dispute as to the satisfactory performance of that original contractor, the original contractor shall have a right to serve upon the owner a "10-day stop work order" that states that unless all amounts then due the original contractor are paid within 10 days from the date notice is provided under this section, the original contractor will stop work on the project. At least five days before service upon the owner of a "10-day stop work order," the contractor shall post, in a conspicuous location at the job site and at the main office, if one exists, of the job site, a notice that the original contractor intends to file a 10-day stop work order pursuant to this section. A copy of the written notice shall also be served upon all subcontractors with whom the original contractor has a direct contractual relationship on the project at the same time the notice is served upon the owner. Within five days of receipt of written notice by an original contractor pursuant to this section, the owner shall forward to the construction lender, if any, at the address provided in the construction loan agreement, a copy of the notice by first-class mail.

Upon resolution of the dispute or cancellation of the 10-day notice by the original contractor, the original contractor shall post, in a conspicuous location at the job site and at the main office, and serve a notice to inform the subcontractors with whom the original contractor has a direct contractual relationship of this resolution or cancellation.

(b) The original contractor's right to stop work pursuant to this section is in addition to any and all other rights the

original contractor may have under the law.

- (c) Notwithstanding any other provision, the original contractor or his or her surety, or subcontractor or his or her surety, shall not be liable for any delays or damages that the owner or contractor of a subcontractor may suffer as a result of the original contractor serving the owner with a 10-day stop work order, and subsequently stopping work for nonpayment if all of the posting and notice requirements described in subdivision (a) are met. An original contractor's or original subcontractor's liability to a subcontractor or material supplier resulting from the cessation of work under this section shall be limited to the amount of monetary damages the subcontractor or material supplier could recover under the mechanic's lien law for goods and services provided up to the date the subcontractor ceases work, provided that (1) liability shall continue for work performed and materials supplied up to and including the 10-day notice period and not beyond, and (2) this provision does not apply to limit monetary damages for custom work, including materials which have been fabricated, manufactured, or ordered to specifications that are unique to the job.
- (d) If the payment is not made within 10 days from the date the notice was served, the original contractor or his or her surety, may seek a judicial determination of liability for the amount not paid for work performed in an expedited proceeding in the superior court in the county in which the private work improvement is located.
- (e) It shall be against public policy to waive the provisions of this section in any written contract for private work of improvement.
- (f) This section shall apply to any contract entered into on or after January 1, 1999. However, nothing in this section shall be construed to apply to retentions withheld by a lender in accordance with the construction loan agreement.
- (g) The stop work order specified in this section for private works of improvement may be served as follows:
- (1) If the person to be notified resides in this state, by delivering the stop work order personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j) of Section 3097.
- (2) If the person to be notified of the stop work order does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender.
- (3) Service pursuant to this paragraph by certified mail is effective upon receipt. Service by registered mail is effective five days after mailing.

(Added by Stats. 1998, Chapter 986 (AB 2627).)

CODE OF CIVIL PROCEDURE

Jurisdiction of Small Claims Court

- 116.220. (a) The small claims court shall have jurisdiction in the following actions:
- (1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).
- (2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not contested by the defendant.
- (3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars (\$5,000).
- (4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars (\$5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.
- (b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.
- (c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed (1) two thousand five hundred dollars (\$2,500), or (2) on and after January 1, 2000, four thousand dollars (\$4,000), if the defendant guarantor charges a fee for its guarantor or surety services or the defendant guarantor is the Registrar of the Contractors' State License Board.
- (d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.
- (e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections facility or a Youth Authority facility, the small claims court shall have jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or determination of the plaintiff's administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the judicial officer shall, at his or her discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide such proof.

(g) For purposes of this section, "department" includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

Amended by Stats. 1994, Chapter 479 (AB 3219); Stats. 1995, Chapter 366 (AB 725); Stats. 1998, Chapter 240 (AB 771); Stats. 1999, Chapter 982 (AB 1678).)

FAMILY CODE

Compliance with Support Orders by Applicants for Professional Licenses

(Replaces Section 11350.6 of the Welfare and Institutions Code which was repealed by Stats. 1999, Chapter 478 (AB 196).)

- 17520. License applicants; compliance with support orders; license issuance, renewal, and suspension; review
- (a) As used in this section:
- (1) "Applicant" means any person applying for issuance or renewal of a license.
- (2) "Board" means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.
- (3) "Certified list" means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.
- (4) "Compliance with a judgment or order for support" means that, as set forth in a judgment or order for child or

- family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.
- (5) "License" includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. "License" also includes any driver's license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.
- (6) "Licensee" means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. "Licensee" also means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, "licensee" includes any individual who is either listed on the license or who qualifies for the license.
- (b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title

- IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.
- (c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.
- (d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.
- (e)(1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.
- (2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.
- (A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.
- (B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, "license term" shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

- (C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.
- (D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.
- (3)(A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.
- (B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.
- (C) The 150-day notice period shall not be extended.
- (D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.
- (E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.
- (f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.
- (1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

- (2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.
- (3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.
- (g)(1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.
- (2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.
- (h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:
- (1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.
- (2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.
- (3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of

service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

- (4) The applicant has obtained a judicial finding of compliance as defined in this section.
- (i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.
- (j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:
- (1) Judicial review of the local child support agency's decision not to issue a release.
- (2) A judicial determination of compliance.
- (3) A modification of the support judgment or order. The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion. Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.
- (k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:
- (1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.
- (2) Whether the petitioner is the obligor covered by the support judgment or order.

- (3) Whether the support obligor is or is not in compliance with the judgment or order of support.
- (4)(A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.
- (B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.
- (C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (h) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.
- (1) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. Any board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt. If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.

The department may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

- (m) The department may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the department for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.
- (n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.
- (o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.
- (p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:
- (1) The number of delinquent obligors certified by district attorneys under this section.
- (2) The number of support obligors who also were applicants or licensees subject to this section.
- (3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.
- (4) The costs incurred in the implementation and enforcement of this section.

- (q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).
- (r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.
- (s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.
- (t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).
- (u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.
- (v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost effective and permitted by the Revenue and Taxation Code.
- (w)(1) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code
- (2) Notwithstanding any other provision of law, the suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.
- (x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.
- (y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

(Amended by Stats. 2001, Chapter 755 (SB 943).)

GOVERNMENT CODE

Vacancies; Appointments and Reappointments by the Governor and Senate

- 1774. (a) When an office, the appointment to which is vested in the Governor and Senate, either becomes vacant or the term of the incumbent thereof expires, the Governor may appoint a person to the office or reappoint the incumbent after expiration of the term. Until Senate confirmation of the person appointed or reappointed, that person serves at the pleasure of the Governor. If the term of the office of an incumbent subject to this section expires, the Governor shall have 60 days after the expiration to reappoint the incumbent. If the incumbent is not reappointed within the 60-day period, the office shall be deemed to be vacant as of the first day following the end of the 60-day period.
- (b) With respect to the appointment or reappointment by the Governor of a person to an office subject to confirmation by the Senate, the Governor shall submit the name of the person appointed, or the name of the incumbent reappointed, and the effective date of the appointment or reappointment to the Senate or, if the Senate is in recess or has adjourned, to the Secretary of the Senate, within 60 days after the person first began performing the duties of the office, or, as to the reappointment of an incumbent, within 90 days after the expiration date of the term. If the Governor does not provide the required notification within 60 days after the person first began performing the duties of the office, or, as to the reappointment of an incumbent to an office after the expiration date of the term, within 90 days after the expiration of the term, the office shall be deemed to be vacant as of the first day immediately following the end of the applicable period.
- (c) If the Senate either refuses to confirm, or fails to confirm within 365 days after the day the person first began performing the duties of the office, or, with respect to an incumbent whose appointment to that office previously had been confirmed by the Senate and who is reappointed to that office, within 365 days after the expiration date of the term, the following shall apply:
- (1) If the Senate either refuses to confirm, the person may continue to serve in that office until 60 days have elapsed since the refusal to confirm or until 365 days have elapsed since the person first began performing the duties of the office, whichever occurs first, or with respect to an incumbent whose appointment to that office previously has been confirmed by the Senate and who is reappointed to that office, until 60 days have elapsed since refusal or until 365 days after the expiration date of the prior term, and the office for which the appointment was made shall be deemed to be vacant as of the first day immediately following the end of the applicable period.
- (2) If the Senate fails to confirm within the applicable 365-day period, the person may not continue to serve in that office, and the office for which the appointment was made shall be deemed to be vacant as of the first day immediately following the end of the 365-day period.

Powers in Connection with Investigations and Actions

- 11181. In connection with any investigation or action authorized by this article, the department head may do any of the following:
- (a) Inspect books and records.
- (b) Hear complaints.
- (c) Administer oaths.
- (d) Certify to all official acts.
- (e) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to any inquiry, investigation, hearing or proceeding pertinent or action conducted in any part of the state.
- (f) Promulgate interrogatories pertinent or material to any inquiry, investigation, hearing, proceeding, or action.
- (g) Divulge evidence of unlawful activity discovered, pursuant to this article, from records or testimony not otherwise privileged or confidential, to the Attorney General or to any prosecuting attorney who has a responsibility for investigating the unlawful activity discovered, or to any governmental agency responsible for enforcing laws related to the unlawful activity discovered.

(Amended by Stats. 2001, Chapter 74, (AB 260).)

Confidential Character of Information Acquired

11183. Except in a report to the head of the department or when called upon to testify in any court or proceeding at law or as provided in subdivision (f) of Section 11181, any officer who divulges any information acquired by the officer from the private books, documents or papers of any person while acting or claiming to act under any authorization pursuant to this article, in respect to the confidential or private transactions, property or business of any person is guilty of a misdemeanor and disqualified from acting in any official capacity in the department.

Discrimination by "Licensing Board"

- 12944. Licensing boards; unlawful acts based on examinations and qualifications; determination of unlawfulness; inquiries; reasonable accommodations; records
- (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, physical disability, mental disability, age, or sexual orientation, unless the practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal or otherwise affect any right, privilege, status, or responsibility previously

- conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.
- (b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.
- (c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.
- (d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.
- (e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.
- (f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

(Amended by Stats. 1992, Chapter 912 (AB 1286), Chapter 913 (AB 1077); Stats. 1999, Chapter 592 (AB 1001).)

Licensing for Revenue by Cities

- 37101.7. (a) In accordance with the provisions of subdivision (b), the legislative body may license for revenue, and fix the license tax upon, persons who transact in the city the business of a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.
- (b) The ordinance which adopts the license and license tax shall not impose a greater license tax upon those persons subject to it who, as contractors, have no fixed place of business within the city, than upon those contractors who have a fixed place of business within the city; provided, however, that such ordinance may impose a license tax graduated according to gross receipts attributable to contracting work done within a city, regardless of whether or not the contractor has a fixed place of business within the city.

HEALTH AND SAFETY CODE

Declaration of Worker's Compensation Required on Building Permits

19825. (a) Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address					
Address of Building					
Owner's Name if Known					
Telephone No.					
Contractor's Name					
Contractor's Mailing Address					
Lic. No.					
Architect or Engineer					
Architect's or Engineer's Add					
Lic. No.					
In addition the city or county in building project identification	nay require that there be incoportion of a building permi	cluded, in the t, the following:			
Assessor's Parcel Number *					
Permit Date					
Permit Number					
Description of Work					
Building Permit Valuation					
* To be entered by issuing age	ency.				
	LICENSED CONTR	ACTOR'S DEC	LARATION		
I hereby affirm under penalty of Division 3 of the Business a				mencing with Section 70	000)
License Class	Lic. No				
Date	Contractor				
	OWNER-BUIL	DER DECLARA	ATION		

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).):

[] I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who does the work

	himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).			
[]	I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant t the Contractors' State License Law.).			
[]	I am exempt under Sec, B.& P.C. for this reason:			
Date _	Owner			
	WORKERS' COMPENSATION DECLARATION			
I herel	by affirm under penalty of perjury one of the following declarations:			
	I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.			
	I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:			
	Carrier			
	Policy Number			
(This s	section need not be completed if the permit is for one hundred dollars (\$100) or less).			
	I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.			
Date:	Applicant:			
SUBJI DOLL	NING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL ECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND LARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN ION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.			
	CONSTRUCTION LENDING AGENCY			
	by affirm under penalty of perjury that there is a construction lending agency for the performance of the work for this permit is issued (Sec. 3097, Civ. C.).			
Lende	r's Name			
Lende	r's Address			
and co	fy that I have read this application and state that the above information is correct. I agree to comply with all city bunty ordinances and state laws relating to building construction, and hereby authorize representatives of this to enter upon the above-mentioned property for inspection purposes.			
 Signat	ture of Applicant or Agent Date			

(b) The Contractors' State License Board shall provide semiannually, upon the request of city, county, and city and county building departments, a list of all contractors that did not secure payment of compensation in accordance with Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the Labor Code during any period for which workers were employed during the preceeding [FN1] six months.

(Amended by Stats. 1994, Chapter 178 (AB 443); Amended by Stats. 1996, Chapter 799 (SB 1748); amended by Stats. 1997, Chapter 17 (SB 947); Stats.1999, Chapter 982 (AB 1678).)

Definitions: Storage Tanks, Leakage

- 25281. For purposes of this chapter, the following definitions apply:
- (a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.
- (b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.
- (c) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.
- (d) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.
- (2) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.
- (3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. After a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the

- requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.
- (e) "Department" means the Department of Toxic Substances Control.
- (f) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.
- (g) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.
- (h) "Hazardous substance" means either of the following:
- (1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:
- (A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.
- (B) Hazardous substances, as defined in Section 25316.
- (C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.
- (2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.
- (i) "Local agency" means the local agency authorized, pursuant to Section 25283, to implement this chapter.
- (j) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.
- (k) "Owner" means the owner of an underground storage tank.
- (1) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.
- (m) "Pipe" means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.
- (n) "Primary containment" means the first level of containment, such as the portion of a tank that comes into

immediate contact on its inner surface with the hazardous substance being contained.

- (o) "Product tight" means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.
- (p) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land. or the subsurface soils.
- (q) "Secondary containment" means the level of containment external to, and separate from, the primary containment
- (r) "Single walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.
- (s) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.
- (t) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.
- (u) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.
- (v) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.
- (w) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.
- (x) "Unauthorized release" means any release of any hazardous substance that does not conform to this chapter, including, but not limited to, an unauthorized release specified in Section 25295.5, unless this release is authorized by the board or a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.
- (y) (1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:
- (A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used

- primarily for agricultural purposes and not for resale.
- (B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.
- (C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.
- (D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.
- (2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.
- (z) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.
- (aa) (1) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.
- (2) "Unified program facility permit" means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.
- (3) "Permit" means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

(Amended by Stats. 1991, Chapter 1138 (AB 1954); Stats. 1992, Chapter 654 (AB 3089), eff. September 12, 1992; Stats. 1993, Chapter 432 (AB 1061), eff. September 22, 1993; Stats. 1994, Chapter 1200 (SB 469), urgency, eff. September 30, 1994; Stats. 1995, Chapter 639 (SB 1191); Stats.1999, Chapter 328 (SB 665).)

Asbestos Removal

Asbestos and Hazardous Substance Removal Contracts Intent

25914. The Legislature hereby finds and declares that it is the public policy of the state to ensure that work performed on behalf of the public or private entity or person be done properly to safeguard the public health and safety when removing asbestos and hazardous substances.

Definitions

- 25914.1. For purposes of this chapter, the following definitions shall apply:
- (a) "Asbestos" has the same meaning as defined in Section 6501.7 of the Labor Code.

- (b) "Asbestos-related work," is defined in Chapter 6 (commencing with Section 6500) of Part 1 of Division 5 of the Labor Code, including Section 6501.8 of the Labor Code, and involves 100-square feet or more of surface area of asbestos containing material and is such that it requires that the contractor who performs the work must be certified in accordance with subdivision (a) of Section 7058.5 of the Business and Professions Code.
- (c) "Hazardous substance removal" has the same meaning as used in Section 7058.7 of the Business and Professions Code.

Need for Separate Contract; Emergency Conditions

- 25914.2. (a) All asbestos-related work and hazardous substance removal shall be performed pursuant to a contract separate from any other work to be performed, when the presence of asbestos or hazardous substances is not disclosed in the bid or contract documents.
- (b) All asbestos-related and hazardous substance removal work which is disclosed in the bid or contract documents shall not require a separate contract from any other work to be performed.
- (c) In the event the contractor encounters on the site materials he or she reasonably believes to be asbestos or a hazardous substance, and the asbestos or hazardous substance has not been rendered harmless, the contractor may continue work in unaffected areas reasonably believed safe, and shall immediately cease work on the area affected and report the condition to the owner, or the owner's representative, or architect in writing.
- (d) With regard to a public entity, if an emergency condition arises, as defined in Section 10122 or 22035 of the Public Contract Code, then all asbestos-related and hazardous substance removal shall be contracted and performed pursuant to Section 10122 or 22035 of the Public Contract Code, respectively. Contractors performing the work shall have all registration and certificates required pursuant to the Labor Code and the Business and Professions Code.

Certification Requirement; Bids

25914.3. Notwithstanding any other provision of law, a contractor who is not certified pursuant to Section 7058.6 of the Business and Professions Code may bid on a project involving asbestos related work so long as the asbestos related work is performed by a contractor who is registered pursuant to Section 6501.5 of the Labor Code and certified pursuant to Section 7058.6 of the Business and Professions Code.

(Added by Stats. 1991, Chapter 789 (AB 1639).)

Swimming Pool Safety Act

Citation

115920. This act shall be known and may be cited as the Swimming Pool Safety Act.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

Definitions

- 115921. As used in this article the following terms have the following meanings:
- (a) "Swimming pool" or "pool" means any structure intended for swimming or recreational bathing that contains water over 18 inches deep. "Swimming pool" includes in-ground and above-ground structures and includes, but is not limited to, hot tubs, spas, portable spas, and nonportable wading pools.
- (b) "Public swimming pool" means a swimming pool operated for the use of the general public with or without charge, or for the use of the members and guests of a private club. Public swimming pool does not include a swimming pool located on the grounds of a private single-family home.
- (c) "Enclosure" means a fence, wall, or other barrier that isolates a swimming pool from access to the home.
- (d) "Approved safety pool cover" means a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials (ASTM), in compliance with standard F1346-91
- (e) "Exit alarms" means devices that make audible, continuous alarm sounds when any door or window, that permits access from the residence to the pool area that is without any intervening enclosure, is opened or is left ajar. Exit alarms may be battery operated or may be connected to the electrical wiring of the building.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

Safety Features

- 115922. Commencing January 1, 1998, except as provided in Section 115925, whenever a construction permit is issued for construction of a new swimming pool at a private, single-family home it shall be equipped with at least one of the following safety features:
- (a) The pool shall be isolated from access to a home by an enclosure that meets the requirements of Section 115923.
- (b) The pool shall be equipped with an approved safety pool cover.
- (c) The residence shall be equipped with exit alarms on those doors providing direct access to the pool.
- (d) All doors providing direct access from the home to the swimming pool shall be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.
- (e) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the devices set forth in subdivisions (a) to (d), inclusive, as determined by the building official of the jurisdiction issuing the applicable building permit. Any ordinance governing child access to pools adopted by a political subdivision on or before January 1, 1997, is presumed to afford protection that is equal to or greater than that afforded by any of the devices set forth in subdivisions (a) to (d), inclusive.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

Enclosure

- 115923. An enclosure shall have all of the following characteristics:
- (a) Any access gates through the enclosure open away from the swimming pool, and are self-closing with a self-latching device placed no lower than 60 inches above the ground.
- (b) A minimum height of 60 inches.
- (c) A maximum vertical clearance from the ground to the bottom of the enclosure of two inches.
- (d) Gaps or voids, if any, do not allow passage of a sphere equal to or greater than four inches in diameter.
- (e) An outside surface free of protrusions, cavities, or other physical characteristics that would serve as handholds or footholds that could enable a child below the age of five years to climb over.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

Consumer Notice

115924. Any person entering into an agreement to build a swimming pool shall give the consumer notice of the requirements of this article.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

Inapplicability

- 115925. The requirements of this article shall not apply to any of the following:
- (a) Public swimming pools.
- (b) Hot tubs or spas with locking safety covers that comply with the American Society for Testing Materials-Emergency Performance Specification (ASTM-ES 13-89).
- (c) Any pool within the jurisdiction of any political subdivision that adopts an ordinance for swimming pool safety that includes requirements that are at least as stringent as this article.
- (d) An apartment complex, or any residential setting other than a single-family home.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

State Social Services

115926. This article does not apply to any facility regulated by the State Department of Social Services even if the facility is also used as the private residence of the operator. Pool safety in those facilities shall be regulated pursuant to regulations adopted therefor by the State Department of Social Services.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

Interpretation

115927. Notwithstanding any other provision of law, this article shall not be subject to further modification or interpretation by any regulatory agency of the state, this authority being reserved exclusively to local jurisdictions, as provided for in subdivision (e) of Section 115922 and subdivision (c) of Section 115924.

(Added by Stats. 1996, Chapter 925 (AB 3305).)

Suction Outlets

- 115928. Whenever a construction permit is issued for the construction of a new swimming pool or spa, the pool or spa shall meet all of the following requirements:
- (a) (1) The suction outlet of the pool or spa for which the permit is issued shall be equipped to provide circulation throughout the pool or spa as prescribed in paragraph (2).
- (2) The swimming pool or spa shall have at least two circulation drains per pump that shall be hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least three feet in any dimension between the drains.
- (b) Suction outlets that are less than 12 inches across shall be covered with antientrapment grates that cannot be removed except with the use of tools. Slots or openings in the grates or similar protective devices shall be of a shape, area, and arrangement that would prevent physical entrapment and would not pose any suction hazard to bathers.
- (c) Any backup safety system that an owner of a new swimming pool or spa may choose to install in addition to the requirements set forth in subdivisions (a) and (b) shall meet the standards as published in the document, "Guidelines for Entrapment Hazards: Making Pools and Spas Safer," Publication Number 363, January 1998, United States Consumer Products Safety Commission.

(Added bty Stats 2002, Chapter 670 SB (1726).

LABOR CODE

Authority of the Labor Commissioner

- 106. Joint Enforcement Strike Force on the Underground Economy; employees; citations or penalty assessment orders; appeals
- (a) The Labor Commissioner may authorize an employee of any of the agencies that participate in the Joint Enforcement Strike Force on the Underground Economy, as defined in Section 329 of the Unemployment Insurance Code, to issue citations pursuant to Sections 226.4 and 1022 and issue and serve a penalty assessment order pursuant to subdivision (a) of Section 3722
- (b) No employees shall issue citations or penalty assessment orders pursuant to this section unless they have been specifically designated, authorized, and trained by the Labor Commissioner for this purpose. Appeals of all citations or penalty assessment orders shall follow the procedures prescribed in Section 226.5, 1023, or 3725, whichever is applicable.
- (c) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

(Added by Stats. 1994, Chapter 1117 (SB 1490), operative until January 1, 2000; Amended by Stats. 1999, Chapter 306 (SB 319).)

Violations; Release of Claim for Wages

206.5. No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made. Any release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee and the violation of the provisions of this section shall be a misdemeanor.

Electrician Competency and Training Standards

3099. (a) The Division of Apprenticeship Standards shall do all of the following:

- (1) On or before July 1, 2001, establish and validate minimum standards for the competency and training of electricians through a system of testing and certification.
- (2) On or before March 1, 2000, establish an advisory committee and panels as necessary to carry out the functions under this section. There shall be contractor representation from both joint apprenticeship programs and unilateral nonunion programs in the electrical contracting industry.
- (3) On or before July 1, 2003, establish an electrical certification curriculum committee comprised of representatives of the State Department of Education, the California Community Colleges, and the division. The committee shall establish written educational curriculum standards for enrollees in training programs established pursuant to Section 3099.4.
- (4) On or before July 1, 2001, establish fees necessary to implement this section.
- (5) On or before July 1, 2001, establish and adopt regulations to enforce this section.
- (6) Issue certification cards to electricians who have been certified pursuant to this section. Fees collected pursuant to paragraph (3) are continuously appropriated in an amount sufficient to pay the costs of issuing certification cards, and that amount may be expended for that purpose by the Division of Apprenticeship Standards.
- (b) There shall be no discrimination for or against any person based on membership or nonmembership in a union.
- (c) As used in this section, "electricians" includes all persons who engage in the connection of electrical devices for electrical contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically, contractors classified as electrical contractors in the Contractors' State License Board Rules and Regulations. This section does not apply to electrical connections under 100 volt-amperes. This section does not apply to persons performing work to which Section 7042.5 of the Business and Professions Code is applicable, or to electrical work ordinarily and customarily performed by stationary engineers. This section does not apply to electrical work in connection with the installation, operation, or maintenance of temporary or portable electrical equipment performed by technicians in the theatrical, motion picture production,

television, hotel, exhibition, or trade show industries.

(Added by Stats. 1999, Chapter 781 (AB 931): Amended by Stats. 2000, Chapter 875 (AB 248); Amended by Stats 2002, Chapter 48 (AB 1087).)

Building Permits; Requirement for Verification of Workers' Compensation

3800. (a) Every county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall require that each applicant for the permit sign a declaration under penalty of perjury verifying workers' compensation coverage or exemption from coverage, as required by Section 19825 of the Health and Safety Code.

(b) At the time of permit issuance, contractors shall show their valid workers' compensation insurance certificate, or the city or county may verify the workers' compensation coverage by electronic means.

(Amended by Stats. 1994, Chapter 178 (AB 443); Stats.1999, Chapter 982 (AB 1678).)

Asbestos Certification

6501.5. Effective January 1, 1987, any employer or contractor who engages in asbestos-related work, as defined in Section 6501.8, and which involves 100 square feet or more of surface area of asbestos-containing material, shall register with the division.

The division may grant registration based on a determination that the employer has demonstrated evidence that the conditions, practices, means, methods, operations, or processes used, or proposed to be used, will provide a safe and healthful place of employment. This section is not intended to supersede existing laws and regulations under Title 8, California Administrative Code, Section 5208.

An application for registration shall contain such information and attachments, given under penalty of perjury, as the division may deem necessary to evaluate the safety and health of the proposed employment or place of employment. It shall include, but not be limited to, all of the following:

- (a) Every employer shall meet each of the following criteria:
- (1) If the employer is a contractor, the contractor shall be certified pursuant to Section 7058.5 of the Business and Professions Code.
- (2) Provide health insurance coverage to cover the entire cost of medical examinations and monitoring required by law and be insured for workers' compensation, or provide a five hundred dollar (\$500) trust account for each employee engaged in asbestos-related work. The health insurance coverage may be provided through a union, association, or employer.
- (3) Train and certify all employees in accordance with all training required by law and Title 8 of the California Administrative Code.
- (4) Be proficient and have the necessary equipment to safely do asbestos-related work.

- (b) Provide written notice to the division of each separate job or phase of work, where the work process used is different or the work is performed at noncontiguous locations, noting all of the following:
- (1) The address of the job.
- (2) The exact physical location of the job at that address.
- (3) The start and projected completion date.
- (4) The name of a certified supervisor with sufficient experience and authority who shall be responsible for the asbestos-related work at that job.
- (5) The name of a qualified person, who shall be responsible for scheduling any air sampling, laboratory calibration of air sampling equipment, evaluation of sampling results, and conducting respirator fit testing and evaluating the results of those tests.
- (6) The type of work to be performed, the work practices that will be utilized, and the potential for exposure.

Should any change be necessary, the employer or contractor shall so inform the division at or before the time of the change. Any oral notification shall be confirmed in writing.

- (c) Post the location where any asbestos-related work occurs so as to be readable at 20 feet stating, "Danger—Asbestos. Cancer and Lung Hazard. Keep Out."
- (d) A copy of the registration shall be provided before the start of the job to the prime contractor or other employers on the site and shall be posted on the jobsite beside the Cal-OSHA poster.
- (e) The division shall obtain the services of three industrial hygienists and one clerical employee to implement and to enforce the requirements of this section unless the director makes a finding that these services are not necessary or that the services are not obtainable due to a lack of qualified hygienists applying for available positions. Funding may, at the director's discretion, be appropriated from the Asbestos Abatement Fund.
- (f) Not later than January 1, 1987, the Division of Occupational Safety and Health shall propose to the Occupational Safety and Health Standards Board for review and adoption a regulation concerning asbestos-related work, as defined in Section 6501.8, which involves 100 square feet or more of surface area of asbestos-containing material.

The regulation shall protect most effectively the health and safety of employees and shall include specific requirements for certification of employees, supervisors with sufficient experience and authority to be responsible for asbestos-related work, and a qualified person who shall be responsible for scheduling any air sampling, for arranging for calibration of the air sampling equipment and for analysis of the air samples by a NIOSH approved method, for conducting respirator fit testing, and for evaluating the results of the air sampling.

The Division of Occupational Safety and Health shall also propose a regulation to the Occupational Safety and Health Standards Board for review and adoption specifying sampling methodology for use in taking air samples.

Asbestos, Definition

6501.7. "Asbestos" means fibrous forms of various hydrated minerals, including chrysotile (fibrous serpentine), crocidolite (fibrous riebecktite), amosite (fibrous cummingtonite—grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.

Asbestos-Related Work; Asbestos Containing Construction Material

- 6501.8. (a) For purposes of this chapter, "asbestos-related work" means any activity which by disturbing asbestos-containing construction materials may release asbestos fibers into the air and which is not related to its manufacture, the mining or excavation of asbestos-bearing ore or materials, or the installation or repair of automotive materials containing asbestos.
- (b) For purposes of this chapter, "asbestos containing construction material" means any manufactured construction material that contains more than one-tenth of 1 percent asbestos by weight.
- (c) For purposes of this chapter, "asbestos-related work" does not include the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe used outside of buildings, if the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe does not result in asbestos exposures to employees in excess of the action level determined in accordance with sections 1529 and 5208 of Title 8 of the California Code of Regulations, and if the employees and supervisors involved in the operation have received training through a task-specific training program, approved pursuant to section 9021.9, with written certification of completion of that training by the training entity responsible for the training.

(Amended by Stats. 1993, Chapter 1075 (SB 877).)

Determine Presence of Asbestos Before Commencing Work

6501.9. The owner of a commercial or industrial building or structure, employer, or contractor who engages in, or contracts for, asbestos-related work shall make a good faith effort to determine if asbestos is present before the work is begun. The contractor or employer shall first inquire of the owner if asbestos is present in any building or structure built prior to 1978.

(Amended by Stats. 1986, Chapter 1451, eff. September 30, 1986.)

PENAL CODE

Probation Hearing for State Licensee; Participation of State Agency Which Issued License; Definitions

23. In any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency pursuant to provisions of the Business and Professions Code or the Education Code, or the Chiropractic Initiative Act, the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of

probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee.

For purposes of this section, the term "license" shall include a permit or a certificate issued by a state agency.

For purposes of this section, the term "state agency" shall include any state board, commission, bureau, or division created pursuant to the provisions of the Business and Professions Code, the Education Code, or the Chiropractic Initiative Act to license and regulate individuals who engage in certain businesses and professions.

(Amended by Stats. 1989, Chapter 388; Amended Stats 2002, Chapter 545 (S 1852).)

Unlawful Price Increases Following a Declared State of Emergency

- 396. (a) The Legislature hereby finds that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods, or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served.
- (b) Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. However, a greater price increase shall not be unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable

- to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price represents no more than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency.
- (c) Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, or storm declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, or storm by the executive officer of any county, city, or city and county, and for a period of 180 days following that declaration, it is unlawful for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation of emergency. However, a greater price increase shall not be unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service during the state of emergency, the price represents no more than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency.
- (d) The provisions of this section may be extended for additional 30-day periods by a local legislative body or the California Legislature if deemed necessary to protect the lives, property, or welfare of the citizens.
- (e) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.
- (f) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state
- (g) For the purposes of this section:
- (1) "State of emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a state of emergency has been declared by the President of the United States or the Governor of California.
- (2) "Local emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a local emergency has been declared by the executive officer or governing body of any city or county in California.

- (3) "Consumer food item" means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.
- (4) "Repair or reconstruction services" means services performed by any person who is required to be licensed under the Contractors' State License Law (Chapter 9 commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.
- (5) "Emergency supplies" includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.
- (6) "Medical supplies" includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.
- (7) "Building materials" means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.
- (8) "Gasoline" means any fuel used to power any motor vehicle or power tool.
- (9) "Transportation, freight, and storage services" means any service that is performed by any company that contracts to move, store, or transport personal or business property or rents equipment for those purposes.
- (10) "Housing" means any rental housing leased on a month-to-month term.
- (11) "Goods" has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.
- (h) Nothing in this section shall preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section.
- (i) Any business offering an item for sale at a reduced price immediately prior to the proclamation of the emergency may use the price at which they usually sell the item to calculate the price pursuant to subdivision (b) or (c).

(Added by Stats. 1993-94, 1st Ex. Sess., Chapter 52 (ABX 36), eff. November 30, 1994; Amended by Stats. 1995, Chapter 91 (SB 975).)

Wrongful Diversion of Public Funds, a Public Offense

484b. Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment and willfully fails to apply such money for such purpose by either willfully failing to complete the improvements for which funds were provided or willfully failing to pay for services, labor, materials or equipment provided incident to such construction, and wrongfully diverts the funds to a use other than that for which the funds were received, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in the county jail not exceeding one year, or by both such fine and such imprisonment if the amount diverted is in excess of one thousand dollars (\$1,000). If the amount diverted is less than one thousand dollars (\$1,000), the person shall be guilty of a misdemeanor.

False Voucher, Embezzlement

484c. Any person who submits a false voucher to obtain construction loan funds and does not use the funds for the purpose for which the claim was submitted is guilty of embezzlement.

Rebates

532e. Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment incident to constructing improvements on real property and willfully rebates any part of the money to or on behalf of anyone contracting with such person, for provision of the services, labor, materials or equipment for which the money was given, shall be guilty of a misdemeanor; provided, however, that normal trade discount for prompt payment shall not be considered a violation of this section.

Insurance Fraud

- 551. (a) It is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to an automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder's automobile physical damage or automobile collision coverage, or to a contractor or its employees or agents for repairs to or replacement of a structure covered by a residential or commercial insurance policy.
- (b) Except in cases in which the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs to or replacement of a motor vehicle or residential or commercial structure. This subdivision does not prohibit an advertisement for repair or replacement services at a discount as long as the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.
- (c) A violation of this section is a public offense. Where the amount at issue exceeds four hundred dollars (\$400), the offense is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine. In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

- (d) Every person who, having been convicted of subdivision (a) or (b), or Section 7027.3 or former Section 9884.75 of the Business and Professions Code and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of subdivision (a) or (b), upon a subsequent conviction of one of those offenses, shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.
- (e) For purposes of this section:
- (1) "Automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.
- (2) "Contractor" has the same meaning as set forth in Section 7026 of the Business and Professions Code.

(Added by Stats. 1992 Chapter 675 (AB 3067); Amended by Stats. 1993, Chapter 462 (AB 438), effective September 25, 1993; Amended by Stats. 1995, Chapter 373 (SB 639).)

Enhanced Sentence for Fraud in Repairing Natural Disaster Damage

- 667.16 (a) Any person convicted of a felony violation of Section 470, 487, or 532 as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall receive a one-year enhancement in addition and consecutive to the penalty prescribed. The additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.
- (b) This enhancement applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.
- (c) Notwithstanding any other law, the court may strike the additional term provided in subdivision (a) if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(Added by Stats. 1994, Chapter 175 (SB 634), urgency, eff. July 9, 1994.)

State of Emergency; Fraud of Owners or Lessees of Residential Structures; Penalties

670. (a) Any person who violates Section 7158 or 7159 of, or subdivision (b), (c), (d), or (e) of Section 7161 of, the Business and Professions Code or Section 470, 484, 487, or 532 of this code as part of a plan or scheme to defraud an owner or lessee of a residential or nonresidential structure in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster specified in subdivision (b), shall be subject to the penalties and

- enhancements specified in subdivisions (c) and (d). The existence of any fact which would bring a person under this section shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plead of guilty or nolo contendere or by trial by the court sitting without a jury.
- (b) This section applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.
- (c) The maximum or prescribed amounts of fines for offenses subject to this section shall be doubled. If the person has been previously convicted of a felony offense specified in subdivision (a), the person shall receive a one-year enhancement in addition to, and to run consecutively to, the term of imprisonment for any felony otherwise prescribed by this subdivision.
- (d) Additionally, the court shall order any person sentenced pursuant to this section to make full restitution to the victim or to make restitution to the victim based on the person's ability to pay, as defined in subdivision (b) of Section 1203.1b. The payment of the restitution ordered by the court pursuant to this subdivision shall be made a condition of any probation granted by the court for an offense punishable under this section. Notwithstanding any other provision of law, the period of probation shall be at least five years or until full restitution is made to the victim, whichever first occurs.
- (e) Notwithstanding any other provision of law, the prosecuting agency shall be entitled to recover its costs of investigation and prosecution from any fines imposed for a conviction under this section.

Amended by Stats. 2001, Chapter 854 (SB 205).)

PUBLIC CONTRACT CODE

Process; Penalties for Violation of Public Contract Code

4110. A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

Licensees' Violation of Public Contract Code is Misdemeanor

4111. Violation of this chapter by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code constitutes grounds for disciplinary action by the Contractors State License Board, in addition to the penalties prescribed in Section 4110.

License Required for Award of Contract

6100. (a) Any state agency or department, as defined in Section 10357, which is subject to this code, shall, prior to awarding a contract for work to be performed by a contractor, as defined by Section 7026 of the Business and Professions Code, verify with the Contractors' State License Board that the person seeking the contract is licensed in a classification appropriate to the work to be undertaken. Verification as required by this section need only be made once every two years with respect to the same contractor.

(b) In lieu of the verification, the state entity may require the person seeking the contract to present his or her pocket license or certificate of licensure and provide a signed statement which swears, under penalty of perjury, that the pocket license or certificate of licensure presented is his or hers, is current and valid, and is in a classification appropriate to the work to be undertaken.

Noncollusion Affidavit

7106. Any public works contract of a public entity shall include an affidavit, in the following form:

"NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

License Required for Award of Contract on State Projects

10164. In all state projects where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The contract shall not be awarded unless the state agency has verified that the contractor has a valid license in the appropriate classification for the work performed. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License Board. The department shall include a statement to that effect in the standard form of pregualification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract as provided in Section 10181 and shall result in the forfeiture of the security of the

(Amended by Stats. 1994, Chapter 432 (AB 3365).)

Payment to Subcontractors

10262. The contractor shall pay to his or her subcontractors, within 10 days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by his or her subcontractors, to the extent of each subcontractor's interest therein. The payments to subcontractors shall be based on estimates made pursuant to Section 10261. Any diversion by the contractor of payments received for prosecution of a contract, or failure to reasonably account for the application or use of the payments constitutes ground for actions proscribed in Section 10253, in addition to disciplinary action by the Contractors' State License Board. The subcontractor shall notify, in writing, the Contractors' State License Board and the department of any payment less than the amount or percentage approved for the class or item of work as set forth in Section 10261.

(Amended by Stats. 1998, Chapter 857 (AB 2084).)

Public Works Contracts; Bidder or Contractor Not Licensed; Penalties

20103.5. In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contract was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include

a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

(Added by Stats. 1990, Chapter 321 (SB 929) as Section 20104, eff. July 16, 1990. Renumbered as Section 20103.5 by Stats. 1990, Chapter 1414 (AB 4165).)

UNEMPLOYMENT INSURANCE CODE

Joint Enforcement Strike Force on the Underground Economy

- 329. Joint Enforcement Strike Force on the Underground Economy; agency representatives; chairperson; duties and powers; report
- (a) The director, or his or her designee, shall serve as Chairperson of the Joint Enforcement Strike Force on the Underground Economy provided for in Executive Order W-66-93. The strike force shall include, but not be limited to, representatives of the Employment Development Department, the Department of Consumer Affairs, the Department of Industrial Relations, the Department of Insurance, and the Office of Criminal Justice Planning. Other agencies that are not part of the administration, such as the Franchise Tax Board, the State Board of Equalization, and the Department of Justice, are encouraged to participate in the strike force.
- (b) The strike force shall have the following duties:
- (1) To facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground economy.
- (2) To improve the coordination of activities among the participating agencies.
- (3) To develop methods to pool, focus, and target the enforcement resources of the participating agencies in order to deter tax evasion and maximize recoveries from blatant tax evaders and violators of cash-pay reporting laws
- (4) To reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.
- (c) In addition, the strike force shall be empowered to:
- (1) Form joint enforcement teams when appropriate to utilize the collective investigative and enforcement capabilities of the participating members.
- (2) Establish committees and rules of procedure to carry out the activities of the strike force.
- (3) To solicit the cooperation and participation of district attorneys and other state and local agencies in carrying out the objectives of the strike force.
- (4) Establish procedures for soliciting referrals from the public, including, but not limited to, an advertised telephone hotline.
- (5) Develop procedures for improved information sharing

- among the participating agencies, such as shared automated information data base systems, the use of a common business identification number, and a centralized debt collection system.
- (6) Develop procedures to permit the participating agencies to use more efficient and effective civil sanctions in lieu of criminal actions wherever possible.
- (7) Evaluate, based on its activities, the need for any statutory change to do any of the following:
- (A) Eliminate barriers to interagency information sharing.
- (B) Improve the ability of the participating agencies to audit, investigate, and prosecute tax and cash-pay violations.
- (C) Deter violations and improve voluntary compliance.
- (D) Eliminate duplication and improve cooperation among the participating agencies.
- (E) Establish sharable information data bases.
- (F) Establish a common business identification number for use by participating agencies.
- (G) Establish centralized, automated debt collection services for the participating agencies.
- (H) Strengthen civil penalty procedures to allow the strike force to emphasize civil rather than criminal penalties wherever possible.
- (d) The strike force shall report to the Governor and the Legislature annually during the period of its existence, by June 30 of each year, regarding its activities.
- The report shall include, but not be limited to, all of the following:
- (1) The number of cases of blatant violations and non-compliance with tax and cash-pay laws identified, audited, investigated, or prosecuted through civil action or referred for criminal prosecution.
- (2) Actions taken by the strike force to publicize its activities.
- (3) Efforts made by the strike force to establish an advertised telephone hotline for receiving referrals from the public.
- (4) Procedures for improving information sharing among the agencies represented on the strike force.
- (5) Steps taken by the strike force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.
- (6) Recommendations for any statutory changes needed to accomplish the goals described in paragraph (7) of subdivision (c).
- (e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

(Added by Stats. 1994, Chapter 1117 (SB 1490), operative until January 1, 2000; Amended by Stats. 1999, Chapter 306 (SB 319); This section is repealed by its own terms on January 1, 2006; Amended by Stats. 2001, Chapter 180 (AB 202); Amended by Stats 2002 (AB1724).)

Permissible Uses for EDD Data

- 1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:
- (a) To enable the director or his or her representative to carry out his or her responsibilities under this code.
- (b) To properly present a claim for benefits.
- (c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.
- (d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).
- (e) To enable an employer to receive a reduction in contribution rate.
- (f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.
- (g) To enable county administrators of general relief orassistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.
- (h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.
- (i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The informa-

- tion provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.
- (1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.
- (2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.
- (3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.
- (4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.
- (j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.
- (k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.
- (1) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).
- (m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the victims of crime program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.
- (n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

- (1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.
- (2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.
- (o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations.

For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized Governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

- (p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.
- (q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only.

Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the

- information, and shall not include information regarding individual employees.
- (s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.
- (t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.
- (u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:
- (1) The total amount of the assessment.
- (2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.
- (3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.
- (v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

Job Training Program; Waiver of Fees

10501. Any public assistance recipient who successfully completes a job training program approved under this part shall be exempted from the payment of those fees normally associated with any examination or certification required by state law if the employment opportunity is for the job for which the recipient was trained.

WATER CODE

License Required for Water Wells

13750.5. No person shall undertake to dig, bore, or drill a water well, cathodic protection well, groundwater monitoring well, or geothermal heat exchange well, to deepen or reperforate such a well, or to abandon or destroy such a well, unless the person responsible for that construction, alteration, destruction, or abandonment possesses a C-57 Water Well Contractor's License.

(Amended by Stats. 1996, Chapter 581 (AB 2334).)